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7 *ATTORNEYS FOR USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC*

8 **UNITED STATES BANKRUPTCY COURT**

9 **DISTRICT OF NEVADA**

10 In re:
 11 USA COMMERCIAL MORTGAGE COMPANY,
 12 USA CAPITAL REALTY ADVISORS, LLC,
 13 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 LLC,
 14 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 15 USA SECURITIES, LLC,
 16 Debtors

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter Number: 11

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

17 Affects:
 18 ☐ All Debtors
 19 ☐ USA Commercial Mortgage Company
 20 ☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☒ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

21 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 22 LLC,

Plaintiff,

23 vs.

24 MARGARET B. McGIMSEY TRUST; BRUCE
 25 McGIMSEY; JERRY McGIMSEY; SHARON
 26 McGIMSEY; and JOHNNY CLARK,

Defendants.

Adversary No.

**COMPLAINT FOR
SUBORDINATION OF
CLAIMS**

1 Plaintiff USA Capital Diversified Trust Deed Fund, LLC ("Diversified" or "Debtor")
2 hereby complains against defendants and alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 11 U.S.C. § 510.

5 2. This is an adversary proceeding pursuant to Rule 7001 of the Federal Rules of
6 Bankruptcy Procedure. This adversary proceeding relates to the above-referenced cases pending
7 in the United States Bankruptcy Court for the District of Nevada, jointly administered under case
8 number BK-S-06-10725 LBR (the "Bankruptcy Case"), under chapter 11 of the Bankruptcy
9 Code.

10 3. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(H).

11 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

12 **GENERAL ALLEGATIONS**

13 5. Diversified is a Nevada limited liability company doing business within this
14 judicial district.

15 6. Defendants are the Margaret B. McGimsey Trust, Bruce McGimsey, Jerry
16 McGimsey, Sharon McGimsey, and Johnny Clark (collectively, the "Defendants").

17 7. Diversified is a fund created in 2000 for the purpose of aggregating investors'
18 funds to be used to invest in real property secured loans funded in whole or in part by Diversified.
19 Investors purchased membership interests in Diversified, which then invested in various loans.

20 8. Each of the Defendants purchased a membership interest in Diversified.

21 9. Diversified filed a voluntary petition for bankruptcy protection in this Bankruptcy
22 Case on April 13, 2006.

23 10. Each of the Defendants asserted an equity interest in Diversified and filed a proof
24 of interest in the Bankruptcy Case on November 13, 2006. On the same day, each of the
25 Defendants also filed a proof of claim against Diversified for the same amounts based on
26 allegations of breach of contract and fraud relating to their purchase of membership interests in
27 Diversified. In such proofs of claim, the Defendants identified their claims as unsecured
28 nonpriority claims.

11. Specifically, Defendants timely filed in the Bankruptcy Case the following proofs of interest and proofs of claims (the proofs of claim listed below are collectively referred to herein as "Proofs of Claim"):

- a. The Margaret B. McGimsey Trust filed a proof of interest in the amount of \$96,094.75 plus interest. The Margaret B. McGimsey Trust also filed a proof of claim for breach of contract and fraud in the amount of \$96,094.75 plus interest.
- b. A proof of interest was filed on behalf of "Sharon or Jerry McGimsey" in the amount of \$311,091.58 plus interest. A proof of claim also was filed on behalf of "Sharon or Jerry McGimsey" for breach of contract and fraud in the amount of \$311,091.58 plus interest.
- c. Johnny Clark filed a proof of interest in the amount of \$99,467.90 plus interest. Johnny Clark also filed a proof of claim for breach of contract and fraud in the amount of \$99,467.90 plus interest.
- d. Bruce McGimsey filed a proof of interest in the amount of \$86,171.22. Bruce McGimsey also filed a proof of claim for breach of contract and fraud in the amount of \$86,171.22.

FIRST CLAIM FOR RELIEF
(Subordination of Claims Under 11 U.S.C. § 510(b) – Against all Defendants)

12. Diversified repeats and realleges the allegations of paragraphs 1 through 11 above as if fully set forth herein.

13. Pursuant to 11 U.S.C. § 510(b), the Proofs of Claim should be subordinated to all claims or interests that are senior to or equal to the claim or interest represented by such member interest in Diversified. In short, for purposes of distribution, the Proofs of Claim should be subordinated below equity, i.e., below all membership interests in Diversified.

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PRAYER FOR RELIEF

WHEREFORE, Diversified prays as follows:

A. For a judgment that the Proofs of Claim are subordinated below all claims and all interests that are senior to or equal to the claim or interest represented by a membership interest in Diversified.

B. For such further relief that this Court deems to be just and proper.

Dated: September 24, 2007

SNELL & WILMER LLP

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Robert Kinas
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Trust Deed Fund, LLC

/s/ Marc A. Levinson
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